

**DEPARTMENT OF CONSUMER AFFAIRS
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS**

INITIAL STATEMENT OF REASONS

Hearing Date: No Hearing Scheduled

Subject Matter of Proposed Regulations: Substantial Relationship Criteria, Criteria for Rehabilitation, Disciplinary Orders

Sections Affected: Division 5, 16 CCR § 419; Division 29, 16 CCR §§ 3060, 3061, and 3064

Specific Purpose of the Proposed Changes, and the Factual Basis/Rational:

The purpose of these amendments is to strengthen the enforcement regulations related to the practices of geology and geophysics, for the goal of protecting the public health, safety, and welfare.

Terminology is also being updated throughout the regulations in order to reflect the current terminology used for a licensee. For example, the word “registration” has been changed to “license”. Also, “professional” and “specialty” have been added in order to reflect the current license titles that are specified in statute. Effective January 1, 2005, with the passage of SB 1914 (Committee on Business and Professions, Chapter 865, Statutes of 2004), the title for a licensed geologist in the State of California changed from Registered Geologist (RG) to Professional Geologist (PG).

- Section 3060 - Substantial Relationship Criteria

The proposed amendments would standardize the Substantial Relationship Criteria, 16 CCR 3060 regarding the practices of Geology and Geophysics in order to maintain consistency with the Substantial Relationship Criteria in section 416 regarding the practices of Professional Engineering and Land Surveying.

The proposed amendments would specify that aiding and abetting any person in a violation of the Geologist and Geophysicist Act or conviction of a crime arising from or in connection with the practices of professional geology or geophysics are grounds for denial, suspension, or revocation of a license.

The proposed addition of the language strengthens public protection and the Board’s enforcement program by making it clear that aiding and abetting a person in a crime related to the practice of the profession, or that a crime in connection with the profession is also grounds for denial suspension or revocation.

- Section 3061 - Criteria for Rehabilitation

The proposed amendments would standardize the Criteria for Rehabilitation regarding the practices of Geology and Geophysics in order to maintain consistency with the Criteria for Rehabilitation in section 418 regarding the practices of Professional Engineering and Land Surveying.

The proposed amendments would (1) add the total criminal record and evidence of expungement as factors of consideration when denying an applicant for licensure; (2) include any act(s) committed prior to or subsequent to the act(s) or offense(s) under consideration as grounds for suspension or revocation under Business and Professions Code section 490; and (3) include the criteria to be taken into account when considering a petition for reinstatement, such as educational courses taken; work done under the responsible charge of a licensee or a person legally authorized to practice; payment of restitution to the consumer; the potential harm that could be caused by the reinstatement; disciplinary history, other than criminal actions, after the revocation; the recognition by the petitioner of his or her actions/behavior that led to the revocation; and correction of the actions/behavior that led to the revocation.

- Sections 3064 and 419 - Disciplinary Orders

Sections 3064 and 419 outline what the Board can order as disciplinary action against a licensee.

The proposed amendments to section 3064 would include the following information regarding disciplinary orders: minimum and maximum disciplinary orders; probationary conditions if the action is stayed; and probationary conditions for stayed orders.

Section 419 is also being amended to change the terminology from “supervising” to “reviewing” professional and from “supervision” to “review” when describing the terms of probation for a licensee that displays signs of incompetency. The purpose of this change is to update incorrect terms to better clarify the intent of the Board.

1. Problem being addressed:

Currently, the enforcement regulations regarding the practices of geology and geophysics are not the same as the enforcement regulations regarding the practices of engineering and land surveying. The implementation of ABX4 20 (Strickland and Huber, Chapter 18, Statutes of 2009-2010 Fourth Extraordinary Session) eliminated the Board for Geologists and Geophysicists and transferred the jurisdiction to regulate the practices of geology and geophysics to the Board for Professional Engineers and Land Surveyors. The transfer of authority was effective on October 23, 2009. In addition, AB 1431 (Hill, Chapter 696, Statutes of 2010) changed the Board name to the Board for Professional Engineers, Land Surveyors, and Geologists, effective January 1, 2011.

As a result of the merger, the Board proposes regulatory changes to provide consistency and standardization, where applicable, regarding the regulations of Division 29 of Title 16 of the CCR (Regulations Relating to the Practices of Geology and Geophysics), and Division 5 of Title 16 of the CCR (Board Rules and Regulations Relating to the Practices of Professional Engineering and Professional Land Surveying).

The Board's 2011-2014 Strategic Plan, Goal 2, is to "Promote laws and regulations that are clear, relevant, unambiguous, and functional". Specifically, Objective 2.10 indicates that the Board will "Review statutes and regulations to provide consistency among all of the Board's regulated professions".

2. Anticipated benefits from this regulatory action:

It is anticipated that creating consistency among all of the Board's regulated professions will make it easier for consumers and the Board's applicants, licensees, and certificate holders to understand and follow the regulations. Licensees and consumers may currently assume that the regulations regarding all of the professions under the Board's jurisdiction are now the same since the merger; however, in reality the regulations are currently different in many areas. Consistency among the regulations, where applicable, should minimize confusion and improve the geology and geophysicist regulations where information is lacking.

In addition, the amendments create consistency with the administration of the Board's enforcement program, which ensure that the disciplinary action against licensees and the denial of applicants is applied fairly, consistently, effectively, and efficiently among all of the professions that the Board regulates. The amendments of the enforcement regulations maintain the Board's mission to protect the life, health, property, and welfare of the public, because the amendments put the same language in the geology and geophysics regulations that have proven to be effective in the engineering and land surveying regulations.

Factual Basis

Section 3060 – Substantial Relationship Criteria

The regulation defines what the substantial relationship is when considering a criminal conviction and whether to deny the issuance of a license or certification, or to take disciplinary action against a license or certification based on the criminal conviction.

Existing law addresses that a crime that is substantially related to the qualifications, functions, and duties of a Professional Geologist, Professional Geophysicist, or specialty geologist, to a degree that it shows the inability of that individual to perform the functions of a licensee in a manner that is consistent with public health, safety and welfare, is subject to license denial, suspension or revocation.

In order to maintain consistency with 16 CCR 416, the proposed amendments add language to section 3060 to specify that aiding and abetting any person in a violation of the Geologist and Geophysicist Act is grounds for denial, suspension or revocation of a license, and the amendment adds a subsection specifying that “a conviction of a crime arising from or in connection with the practices of professional geology or geophysics” is grounds for denial, suspension or revocation of a license.

Section 3061 – Criteria for Rehabilitation

This section refers to the following enforcement issues: the criteria for evaluating the rehabilitation of an applicant and the individual’s present eligibility for licensure or certification following the denial of licensure or certification; the criteria for evaluating the rehabilitation of an individual’s present eligibility to retain their license or certification; and the criteria for evaluating evidence of an individual’s rehabilitation regarding a petition of reinstatement.

In regards to the criteria for evaluating the rehabilitation of an applicant and the individual’s present eligibility for licensure or certification following the denial of licensure or certification (subsection (a)), existing law specifies that the following are relevant factors: the nature and severity of the crime; evidence of crimes committed subsequently and the amount of time that has lapsed between the acts; and the compliance with parole, probation, or restitution and evidence of rehabilitation.

In order to maintain consistency with 16 CCR 418, the amendments to subsection (a) add the total criminal record and evidence of expungement as a factor of consideration. In addition, language has been added to specify that evidence of any acts committed prior to or subsequent to the acts or crimes under the consideration as ground for denial, should be considered. The current language only specified the subsequent acts.

In regards to the criteria for evaluating the rehabilitation of an individual’s present eligibility to retain their license (subsection (b)), existing law specifies that the following are relevant factors: the nature and severity of the crime; amount of time that has lapsed between the acts; the compliance with parole, probation or restitution and evidence of rehabilitation; and the evidence of expungement proceedings.

In order to maintain consistency with 16 CCR 418, the amendments to subsection (b) of this section add a citation regarding B&P Code section 490 (the authority for 16 CCR 3061). Language has been modified for clarification purposes and to maintain consistency with the modifications of subsection (a) of this section.

In regards to the criteria used as evidence of rehabilitation in considering a petition of reinstatement (subsection (c)), existing law states that the criteria outlined in subsection (b) shall be used (the same criteria that was used for evaluating the rehabilitation of an individual’s present eligibility to retain their license).

In order to maintain consistency with 16 CCR 418, the amendments to subsection (c) include the detailing of the criteria used instead of referring to another subsection of this section. The criterion has been changed to include criterion that is more relevant to a petition of reinstatement. The amendments regarding the criterion are as follows: educational courses taken; work done under the responsible charge of a licensee or a person legally authorized to practice; payment of restitution to the consumer; the potential harm that could be caused by the reinstatement; the criteria specified in subsection (b)(1) through (7) of this section; disciplinary history, other than criminal actions, after the revocation; the recognition by the petitioner of his or her actions/behavior that led to the revocation; and correction of the actions/behavior that led to the revocation.

Terminology was also updated throughout this section in order to reflect the current terminology used. For example, the word “registration” has been changed to “license”. Also, “professional” and “specialty” have been added in order to reflect the current license titles that are specified in statute. Effective January 1, 2005, with the passage of SB 1914 (Committee on Business and Professions, Chapter 865, Statutes of 2004), the title for licensed geologist in the State of California changed from Registered Geologist (RG) to Professional Geologist (PG).

Sections 3064 and 419 – Disciplinary Orders

16 CCR 3064 and 419 outline what the Board can order as disciplinary action against a licensee. Existing law indicates that the Board shall consider the Board’s “Disciplinary Guidelines” for deciding how to carry out disciplinary action against a licensee. Section 3064 does not elaborate regarding how to carry out disciplinary action, except to refer to the “Disciplinary Guidelines” and indicate that deviation from the guidelines can occur at the Board’s discretion based on the facts of a case. Currently, in order for a consumer or licensee to read information regarding Professional Geologists and Professional Geophysicist disciplinary orders, they have to seek out the “Disciplinary Guidelines” document on the Board’s website or request a copy from the Board. The disciplinary orders regarding Professional Engineers and Professional Land Surveyors are easily accessible because they are outlined in 16 CCR 419. It is a benefit to the consumers and licensees to have the disciplinary orders outlined within these sections, rather than in a separate document, so that the information is easier to find and the information is readily available in several locations (such as in law books and law websites).

The proposed amendments to 16 CCR 3064 would include the following information regarding disciplinary orders: minimum and maximum disciplinary orders; probationary conditions if the action is stayed; and probationary conditions for stayed orders.

In order to maintain consistency with 16 CCR 419, the proposed language regarding probationary conditions that shall be observed on stayed orders are described as follows: the obedience of all laws and regulations; the submission of special reports as required by the Board; provisions for respondents practicing exclusively outside of California; guidelines on probationary violations; and license restoration after the successful completion of the probationary conditions.

In order to maintain consistency with 16 CCR 419, the proposed language regarding probationary conditions that may be observed on stayed orders are described as follows: license suspension periods and effective date; completion of courses in professional ethics and a time frame for completion; the responsibility of the defendant to provide specified persons and entities with a copy

of the decision and order of the Board; and proof of restitution payment. The conditions that may be ordered in the case of incompetency, negligence or a violation or breach of contract are described, and the cost recovery of the Board's investigation and enforcement costs are discussed.

The current "Disciplinary Guidelines" document extensively outlines specific minimum and maximum conditions that shall apply regarding violation(s) of B&P Code sections 7860 (complaints; investigations; grounds for disciplinary action), 119 (license offenses), 125 (conspire with person not licensed to use license unlawfully), 125.6 (disciplinary action against licensees who discriminate against race, color, sex, religion, ancestry, disability, marital status, or national origin), 496 (denial, suspension or revocation of license for exam subversion), and 820 (mental or physical illness affecting practice of licensee).

The "Disciplinary Guidelines" indicate that the Board "shall" follow the minimum and maximum guidelines for each subsection of the listed codes. The guidelines are not conducive to public safety because the guidelines impose minimum and maximum stipulations on a violation with no regard to all of the factors pertaining to a particular case. Even though the current language of 16 CCR 3064 indicates that the Board has discretion to deviate from the guidelines, the guidelines imply that the timelines should be followed specifically regarding each violation. In order to maintain consistency with 16 CCR 419, the proposed language states that the minimum disciplinary action shall be reproof, and the maximum disciplinary action shall be revocation. In addition, the order may be stayed and be placed on a probationary period for a minimum of two years. The amended language allows the Board more flexibility to ensure that the proper action is taken against an individual based on the specific circumstances, violation(s) and evidence regarding a case. Also, the proposed language indicates that the decision to place an individual's license on probation is based on extenuating and/or mitigating factors.

The items that are discussed in the "Disciplinary Guidelines" are current practice and are addressed in the amended language; therefore, the amendments do not significantly change current practice. The main benefit is that the information will be more accessible. The items that are current practice are as follows: public reproof; obedience of laws; provisions for respondents practicing outside of California; submission of reports as required; the responsibility of the defendant to provide specified persons and entities with a copy of the decision and order of the Board; cost recovery; violations of probation; completion of courses; and restitution.

16 CCR 419 has been amended to change the terminology from "supervising" to "reviewing" professional and from "supervision" to "review" when describing the terms of probation for a licensee that displays signs of incompetency. The purpose of this change is to update incorrect terms to better clarify the intent of the Board. The intent is for the licensee on probation to still be in responsible charge of work, but for another licensee to act as a mentor or peer reviewer, not as a supervisor to the probationer.

Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon:

1. Board for Professional Engineers, Land Surveyors and Geologists,
March 8-9, 2012 Board Meeting Agenda, Agenda Items 10(B)(iv), 10(B)(v), and 10(B)(vii)

2. Board for Professional Engineers, Land Surveyors and Geologists, March 8-9, 2012 Board Meeting Minutes, Agenda Items 10(B)(iv), 10(B)(v), and 10(B)(vii)
3. Board for Professional Engineers, Land Surveyors and Geologists 2011-2014 Strategic Plan, Goal 2, Objective 2.1
4. Board for Geologist and Geophysicists Disciplinary Guidelines, Revised October 2003

Business Impact

This proposed regulatory action will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts evidence/documents/testimony: The Board does not license businesses; the Board licenses individuals.

Economic Impact Assessment

This proposed regulatory action will have the following effects:

- It will not create or eliminate jobs within the State of California because it is merely establishing the following: the substantial relationship in considering a criminal conviction as grounds for denying the issuance of a license or to take disciplinary action against a licensee; the criteria for rehabilitation of an individual petitioning for reinstatement of a revoked license; and an outline of what the Board can order as disciplinary action against a licensee.
- It will not create new businesses or eliminate existing businesses within the State of California because the proposal only affects individuals that are applying for licensure, and the licensees of the Board.
- It will not affect the expansion of businesses currently doing business within the State of California because the proposal only affects individuals that are applying for licensure, and the licensees of the Board.
- This proposed regulatory action benefits the health and welfare of California residents because it strengthens and clarifies the enforcement regulations that the Board uses, as explained in detail in this document.
- This proposed regulatory action benefits worker safety because it does the following: it clarifies guidelines for denying licensure or taking disciplinary action against a licensee (workers) in regards to the conviction of crime(s), incompetency, non-compliance with laws and regulations, etc. with regard to the practices of professional geology and geophysics.

- This regulatory proposal could potentially have a positive affect on the state's environment by insuring that only competent geologist and geophysicists are practicing in the State of California.

Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to proposed regulatory action would be either more effective than or as effective as and less burdensome on affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

The alternative would be to not make any of the proposed changes, and to keep the regulations as they are currently written. Doing so would continue with the inconsistencies among the Geologist and Geophysicists regulations, and Engineering and Land Surveying regulations. Keeping the regulations as is would do the following:

- It would go against the Board's mission to protect the life, health, property, and welfare of the public.
- It would go against the Board's 2011-2014 Strategic Plan Goals to promote clear, relevant, unambiguous and functional regulations, and to provide consistency among all of the Board's regulated professions with regard to statutes and regulations.
- It would create confusion for consumers and licensees by having enforcement regulations that are not the same for all of the Board's professions.
- The current differences among the enforcement regulations may cause the law to be applied differently among the professions that the Board regulates; therefore, the law may not be applied fairly, consistently, effectively, and efficiently among all of the professions.